

AG Contract No. KR96 0444TRN  
ADOT ECS File No. JPA 95-173  
Project: 10-3(314)/H2034 01R  
Section: I-10 Broadway Road to  
Southern Avenue

INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF TEMPE

THIS AGREEMENT is entered into 3 June, 1996,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-  
954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF TEMPE, acting by and through its MAYOR and CITY COUNCIL  
(the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 48-572 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has authorized  
the undersigned to execute this agreement on behalf of the City.

3. As part of the State's long range improvement plan for  
I-10 near the Broadway curve, a collector-distributor frontage  
road will be constructed on the east side of the existing  
freeway. To accomodate the planned (but not programmed) project,  
additional right-of-way has been acquired. The State and the  
City desire to cooperate in the landscaping installation and  
maintenance of right-of-way required for the future frontage road  
by the demolition of 18 residences thereon, and the construction  
and maintenance of a landscaped buffer area.

THEREFORE, in consideration of the mutual agreements expressed  
herein, it is agreed as follows:

NO. <u>20727</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>06/03/96</u>
<u>Jose A. Hull</u> Secretary of State
By <u>Vicky Greenwood</u>

## II. SCOPE OF WORK

1. The State will acquire and retain title to the future frontage road right-of-way along the West end of the Petersen subdivision, adjacent to and East of the existing I-10 noise wall, and demolish the 18 residences thereon, targeted by June 1996, all at State expense.

2. The City will prepare design plans for the landscaping and irrigation of the noise buffer project and provide them to the State for concurrence. The design will consist of aesthetic landscaping only, with no recreational facilities or amenities.

3. After State concurrence of the plans, the landscaping project will be constructed by the City, all at City expense.

4. The City shall furnish and install necessary water services from water mains to the designated locations within the right of way at the City's expense.

5. The City shall furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at City expense.

6. After construction, the City shall maintain the irrigation system including all testing, adjusting, repairing and operation of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system.

7. The City hereby agrees to maintain the landscaping. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying sprays and insecticide/herbicide dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping. The City will not make any changes, additions or deletions without written approval by the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic.

## III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until cancelled by either party or other competent authority; provided however, in the event the City cancels this agreement, the State will in no way be obligated to maintain the landscaping or irrigation system, and, at such time as the State elects to construct the future frontage road, this agreement shall terminate upon the State's advertisement for construction bids.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Tempe  
City Manager  
Box 5002  
Tempe, AZ 85280


7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TEMPE

STATE OF ARIZONA

Department of Transportation

By   
NEIL G. GIULIANO  
Mayor

By   
PETER L. ENO  
Contract Administrator


ATTEST

By   
HELEN FOWLER  
City Clerk

RESOLUTION

BE IT RESOLVED on this 5th day of March 1996, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Tempe for the purpose of defining responsibilities for the design and construction of a landscape buffer area along I-10 between Broadway and Southern to serve as a temporary noise buffer area.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

  
for LARRY S. BONINE  
Director

APPROVAL OF THE TEMPE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF TEMPE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 17<sup>th</sup> day of May, 1996.

C. Brad Woodford  
City Attorney

I, Helen R. Fowler, City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution No. 96.36 adopted May 9, 1996, by the Tempe City Council, City of Tempe, Maricopa County, Arizona.

DATED this 17th day of May, 1996

A handwritten signature in cursive script, reading "Helen R. Fowler", written over a horizontal line.

Helen R. Fowler, CMC  
City Clerk

RESOLUTION NO. 96.36

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE  
CITY OF TEMPE, ARIZONA, AUTHORIZING THE EXECUTION OF  
AN AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT  
OF TRANSPORTATION

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WHEREAS, it is to the mutual BENEFIT of the State of Arizona, Department of Transportation, and the City of Tempe to enter into an agreement specifying their respective landscape installation and right-of-way maintenance responsibilities pertaining to landscaping of the east side of the I-10 Freeway between Broadway Road and Southern Avenue, and

WHEREAS, the Arizona Department of Transportation has prepared an agreement setting forth the responsibilities for maintenance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor of the City of Tempe is hereby authorized to execute an agreement with the State of Arizona, Department of Transportation setting forth the provisions and responsibilities for the landscape installation and right-of-way maintenance of the east side of the I-10 Freeway between Broadway Road and Southern Avenue.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,

ARIZONA this 9<sup>th</sup> day of May, 1996.



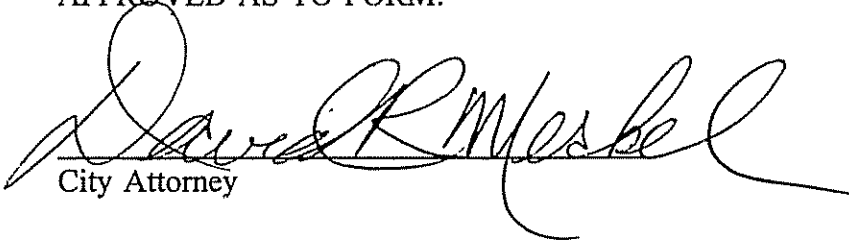
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney



- from 40' to 0' along the south and east property line.
- b. Reduce the required side yard setback in Phase I for Retail Bldg. D. from 40' to 20' along the south property line and the rear yard setback from 40' to 28' along the east property line
- c. Waive required 6' masonry wall between c-store/gas facility (Pad A) and remainder of center.
- d. Waive installation of required landscaping in Lot 4 for future major retail buildings until Phase II is developed except for proposed landscaping buffer indicated along entire length of east property line.

**#SBD-96.38.** Final Subdivision Plat for Warner Center consisting of 5 lots on 13.1 net acres.

**D. ORDINANCES FOR ADOPTION**

**E. RESOLUTIONS**

- \*41. REDEVELOPMENT HOME PROGRAM (0207-18) RESOLUTION NO. 96.29** Adopted a resolution authorizing the city to enter into an Intergovernmental Agreement (**Contract #96-100**) with Maricopa County and other valley cities for an additional three years to receive Federal funding under the HOME Investment Partnership Program and the City Manager to execute such agreement. All program costs and activities will be funded through the HOME Investment Partnership Program except for the 25% match required by the city. This match has been previously approved by the city.
- \*42. LIBRARY ADMIN (0704-01) RESOLUTION 96.30** Adopted a resolution approving **Contract #96-98** between the Maricopa County Library District and the City of Tempe to participate in the Reciprocal Borrowing Program effective July 1, 1996. The City of Tempe will receive \$20 per net non-resident borrower and provides for both semi-annual and annual reimbursements to the city. It is anticipated that participation in the program will result in over \$210,000 in revenue for the city.
- \*43. REAL PROPERTY ACQUISITION (0902-21-02) RESOLUTION NO. 96.33** Adopted a resolution authorizing the acquisition of real property necessary for the construction of the Don Carlos Ave. retention basin project at 1954 E. Don Carlos. All funds required for the acquisition of these properties are federal CDBG funds.
- \*44. ARIZONA DEPARTMENT OF TRANSPORTATION (0107-01) RESOLUTION NO. 96.36** Adopted a resolution authorizing **Contract #96-99** with the State of Arizona, Department of Transportation, setting forth the responsibilities of the City and the Arizona Department of Transportation pertaining to the landscaping installation and maintenance of right-of-way required for the future frontage road along the I-10 Freeway between Broadway Road and Southern Avenue.

**F. MISCELLANEOUS DEPARTMENTAL REPORTS**



TRN Main: 542-1680  
Direct: 542-8837  
Fax: 542-3646

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE: 542-5025  
TELECOPIER : 542-4085

## INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR96-0444-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 24th day of May, 1996.

GRANT WOODS  
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr

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